

The 3rd March, 1995

No. 14/13/87-6 Lab./164.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. The Shahabad Co-operative Sugar Mills Ltd., Shahabad Markanda, *versus* Shri Ramesh Chand.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 24 of 1990.

WORKMAN SHRI RAMESH CHAND, C/O DR. SURINDER SHARMA, BRAHMAN DHARAMSHALA, RAILWAY ROAD, JAGADHARI

and

THE MANAGEMENT OF THE SHAHABAD CO-OPERATIVE SUGAR MILLS LTD., SHAHABAD MARKANDA (KURUKSHETRA)

Present:

WR Shri R. Nath.

MR Shri J. P. Singh

AWARD

In exercise of the powers conferred by clause (C) of Sub-Section (1) of section 10 of the Industrial Disputes Act, (for short called as the 'Act'), the Governor of Haryana referred the following dispute between Shri Ramesh Chand and the management Shahabad Co-operative Sugar Mills Ltd., Shahabad Markanda to this court for adjudication,—*vide* Haryana Government notification bearing No. 53444—48, dated 4th December, 1989:—

Whether the termination of services of Shri Ramesh Chand is valid and justified ? If not, to what relief is he entitled ?

The workman raised an Industrial dispute by serving a demand notice under section 2(A) of the Act. The Conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having been failed, the appropriate Government made the above mentioned reference to this court.

On receipt of the reference notice were issued to the workman as well as to the management. The workman appeared and submitted his claim statement, dated 21st February, 1990 and the management filed the written statement to the claim statement.

On the rival contentions of the parties, the following points in issue were laid down for decision:—

- (1) Whether the impugned termination of services of the workman is invalid ? OPM.
- (2) Whether the claim is not maintained for the reasons stated in preliminary objection No. 1 and 2 of the W.S. ? OPM.
- (3) Relief.

Parties led evidence. I have heard the Ld. representative of the parties. My findings are as under:—

Issue No. 1:

The workman Ramesh Chand examined himself as WW-1 and closed the evidence. On behalf of the management MW-1 Shri Vishav Nath was examined and thereafter the respondent management also closed the evidence. WW-1 in his statement has deposed that he was appointed as a Turner with the respondent-management with effect from 1st November, 1985 and his services were terminated on 8th October, 1987. He further deposed that he was not given any notice before ordering his termination and no compensation was also even paid to him as per requirement of law. He also stated that he has been sitting idle after the date of the termination. MW-1 in any case admitted that the workman was initially appointed with them as a Pump Attendant with effect from 21st November, 1985 and he worked upto 10th November, 1987. This witness further deposed that the workman was alongwith similar other workers performing the duties of Turner was appointed on daily wages he was a seasonal worker, as the workman in the Sugar Mill used to be recruited only in season. According to the management the workman had left the service of his own.

I have heard the arguments of the parties and have also perused the record. Ex M-2 to Ex-M-4 and Ex. M-9 to Ex. M-25 are the photo copies of attendance sheets of daily wages employees which reveal that the workman had worked with the respondent management for more than 240 days. There is nothing on record to show that the workman had left the job on his own. It has been admitted by WW-2 in his examination in chief that no letter was sent to the workman for asking him to join the duty in the season, as is normally done by the respondent-management in other similar cases. The witness categorically admits in his statement that seasonal worker used to be called for duties by sending the written communication. According to the respondent-management itself, this procedure was not adopted to this case of the workman and apparently he was discriminated *vis-a-vis* his other colleagues and evidently workman has become seriously *pre-Judice* in the matter of his termination. In view of the categorical statement of Shri Vishay Nath, MW-1 to the effect as given above the termination of the workman is apparently invalid and illegal. This issue is, therefore, decided in favour of the workman and against the respondent management.

Issue No. 2:

This issue was not pressed and hence no specific finding is needed in this regard.

Relief:

In the end, it is held that the workman is entitled to reinstatement with continuity of service and back wages from the date of demand notice i.e. on 18th September, 1989.

The reference shall stand answered accordingly.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endst. No. 1879, dated the 8th December, 1994.

Forwarded four copies to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

No. 14/13/87-6Lab./165.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of Principal, G. M. N. College, Ambala Cantt. *Versus* Smt. Suman Kansal.

IN THE COURT OF SHRI S. R. BANSAL (ADDI. DISIT. & SESSIONS JUDGE),
PRESIDING OFFICEF, LABOUR COURT, AMBALA.

Reference No. 189 of 1990.

SMT. SUMAN KANSAL, W/O SHRI R. K. KANSAL, HOUSE NO. 6-E-RANI BAG,
AMBALA CANTT.

... *Workman.*

versus

- (1) PRINCIPAL, G. M. N. COLLEGE, AMBALA CANTT.
- (2) MANAGING COMMITTEE, G. M. N. COLLEGE, AMBALA CANTT.

Present :

WR Shri Jasbir Singh.

MR Shri Mohan Lal Gupta.

AWARD

In exercise of the powers conferred by clause (C) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Smt. Suman Kansal and the management (1) Principal G. M. N. College, Ambala Cantt. (2) Managing Committee, G. M. N. College, Ambala Cantt. to this court for adjudication,—vide Haryana Government notification bearing No. 19887-92, dated 15th May, 1990:—

Whether the services of Smt. Suman Kansal has been terminated or she herself resigned from service? If so, to what relief is she entitled?"

The claimant served a demand notice dated 5th February, 1990 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed the appropriate Government made the above mentioned reference.

On receipt of the reference notices where issued to the workman as well as to the management. The workman appeared and stated that her demand notice may be treated as her claim statement. The claimant was employed as clerk in G. M. N. College, Ambala Cantt. since May, 1979 and has been in continuous service as such till December, 1988. According to her she was being harassed by the Principal to the collage and accordingly she sent her resignation on 13th December, 1988 giving a month's notice which period expired on 13th January, 1989. Later on vide letter dated 5th January, 1989 she requested respondent No. 2 to permit her to withdraw her resignation and further asked him to permit her join duty but respondent No. 2 vide his letter dated 10th January, 1989 intimated the claimant that her resignation has been accepted with effect from 13th January, 1989. The appeal filed by the claimant before Director of Higher Education, Haryana, Chandigarh was dismissed vide letter dated 25th August, 1989. According to the claimant action on the part to the principal justice. She is duly within her rights to withdraw her resignation on 5th January, 1989 before the acceptance was intimated to her. She claimed that her resignation may be treated to have been withdrawn and she should be treated to be in continuous service with all service benefits.

On the other hand the management pleaded that the claimant is a habitual defaulter in attendance in as much as she remained on earned leave, medical leave and without pay leave for 88 days in 1986, for 147 days in 1987 and for 223 days for 1988. On merits it was pleaded that the claimant has submitted her resignation on 13th December, 1988 and requested that the same should be accepted with effect from 13th January, 1989. It was alleged that the governing body of the collage accepted her resignation on December, 16th, 1988 with effect from 13th January, 1989. It was alleged that the claimant herself has resigned as she was unable to continuous with the service and her resignation was accepted before the expiry of the notice period and she was duly informed about it. The management therefore prayed for the rejection of the claim of the claimant.

The claimant submitted replication controverting the allegations of the management in the written statement filed and reiterating those made in the claim statement. On the rival contentions of the the parties the following points in issues were laid down for decision:—

- (1) Whether the services of Smt. Suman Kansal has been terminated or she herself resigned from the service? If so, to what relief is she entitled? OPP
- (2) Whether claim is not maintainable for the reasons stated in W. S. OPM
- (3) Relief.

Parties led evidence. I have heard the representatives of the parties. My issue-wise findings are as under:—

Issue No. 1.

The management produced MW-1 Shri O. P. Kaushik, Head Clerk of the management who after stating about the habitual absence of the workman from duty stated that she tendered resignation on 13th December, 1988 which was accepted on 16th December, 1988 and her letter of withdrawal resignation was received after acceptance of resignation. Ex. R-1 is the copy of the disciplinary proceedings suggested to be initiated against the claimant. Ex. R-2 is the recommendation made by the principal regarding the acceptance of resignation. Ex. R-3 is the copy of resignation dated 13th December, 1988 to be affective from 13th January, 1989. Ex. R-4 is the order of acceptance dated 16th December, 1988. Ex. R-5 is the copy of letter dated 12th January, 1989 written by the principal to the Director, Higher Education Haryana,

Chandigarh for permission to fill the vacancy. Ex. R-6 is the copy of minutes of meeting of governing body of G. M. N. Collage, Ambala Cantt. dated 21st January, 1989 Ex. R-7 is the copy of letter written by the principal to the claimant on 4th February, 1989. Ex. R-8 is the copy of the letter written by the principal to the Director, Higher Education, Haryana, Chandigarh dated 9th May, 1989. Ex. R-9 is the copy of order dated 25th August, 1989 of Director, Higher Education, Haryana, Chandigarh whereby the appeal of the claimant was held to be not maintainable. Ex. R-10 is the copy of letter dated 5th January, 1989 of the claimant *vide* which she withdraw the resignation letter. Ex. W-1 is the copy of order dated 16th December, 1988 *vide* which the resignation letter was to be accepted with effect from 13th January, 1989.

The perusal of Ex. R-9 shows the principal admitted before the Director, Higher Education that they had received the letter withdrawal of resignation before the intimation of acceptance of letter of resignation was sent to her. It was held in Rajbir Singh, position V. The Haryana State Cooperative Development Federation Limited Respondent- 1992 (3) Service Cases Today-574 that a resignation can not be accepted before affective date and that an employee was always within its rights to withdraw the resignation letter at any time prior to the effect date. Similar view was taken by the Hon'ble Supreme Court in civil appeal No. 2014 of 1986 decided on 13 February, 1989 in case Punjab National Bank V P K. Mittal wherein the view taken was that an employee was always competent to withdraw his resignation before it becomes effective. Applying the ratio of these judgements to the facts of the present case it is clear that letter of withdraw of Ex. R-10 dated 5th January, 1989 was sent before intimation regarding the acceptance of resignation was sent to Smt. Suman Kansal and also before the letter of resignation was to become effect. Smt. Suman Kansal was therefore, clearly within her legal rights to withdraw her resignation letter. Her letter of resignation sent by her on 13th December, 1988 stood withdraw for all intents and purposes. Her services will be deemed to have been terminated. She is, therefore, entitled to reinstatement with continuity of service but without back wages. The finding on this issue, is therefore, returned in favour of the workman and against the management.

Issue No. 2:

The onus to prove on this issue was on the management. The management has, however, failed to prove this issue. The finding on this issue shall therefore, stand returned against the management and in favour of the workman.

Relief:

In the end, it is held that the workman is entitled to reinstatement with continuity of service but without back wages.

The reference shall stand answered accordingly.

S. R. BANSAL,

Dated 30th December, 1994.

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1989 dated, 30th December, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana Labour and Employment Department Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. District & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.